IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL MISC.NO.6756 M of 2006

DATE OF DECISION: NOVEMBER 28, 2006

Inderjit Singh.

.....Petitioner

VERSUS

State of Punjab and another.

....Respondents

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. Vishal Aggarwal, Advocate,
for the petitioner.

Mr. M. C. Berry, Sr.DAG, Punjab,
for the State.

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RANJIT SINGH, J.

FIR No.167 dated 2.8.2004 was registered against the petitioner under Sections 406, 420 and 120-B IPC basically with the allegation that agreement to sell entered into between petitioner and respondent No.2 was not honoured. The petitioner has claimed that it is a pure and simple civil dispute with no criminality involved and as such, registration of FIR and subsequent proceedings resulting therefrom are nothing but an abuse of the process of the Court. He has accordingly prayed for quashing of the FIR.

The facts, in brief, are that father and son, Surinder Singh and

Inderjit entered into an agreement of sale on 15.4.2003 with Pardeep Kumar in respect of land measuring 19000 Sq.yards situated in Village Tharike, Tehsil and District Ludhiana. The rate of sale agreed was Rs.1200/- per Sq.Yard. Out of this amount, a sum of Rs.5,50,000/- was paid and the balance amount of Rs.14,50,000/- was to be paid on or before 25.4.2003. The respondent-complainant has claimed that he was assured that there was no encumbrance or charge on the above land and the possession thereof was handed over to him at the time of the agreement. The complainant has alleged that inspite of repeated reminders and even after issuance of a notice, the seller-petitioner did not get the requisite documents cleared for registering a sale deed. Claiming that he has made a huge expenditure in developing the land and that the petitioner was wanting to eject him therefrom, he has lodged the impugned FIR. Alleging fraud, the complainant lodged the FIR. The petitioner, however, claim that taking everything as it is, no criminal offence is made out. As per the petitioner, it is a case of pure and simple civil dispute, for which civil suit for specific performance has already been filed and the same is in progress.

Notice in this case was issued and reply has been filed. It has been stated as a preliminary objection that challan in this case has been filed and Judicial Magistrate Ist Class, Ludhiana, is seized of this matter and that petition for quashing, under these circumstances, is not maintainable.

19000 Sq.Yards of land at the rate of Rs.1200/- per sq.Yard was agreed to be sold and the total sale consideration works out to be Rs.2.28 crores. Out of this, an amount of Rs.5,50,000/-

was paid. Such valuable land was statedly handed over to respondent No.2 for development on payment of such a meager amount. This assertion seems to be little far-fetched. It has otherwise been disclosed in the reply that the petitioner and his father had agreed to execute the sale in favour of respondent No.2 and had failed to do so. These facts would show that it is a case of one party backing out from an agreement to sell. Any allegation of cheating or fraud apparently is not made out in this case. Nothing has otherwise been indicated in the reply, which would show that the petitioner had any intention to cheat etc. at the time of entering into an agreement. It is a case of pure and simple civil liability. Respondent No.2 has already exercised that option by filing a civil suit, seeking specific performance of the said agreement of sale. The petitioner has disclosed that after paying the earnest money of Rs.5,50,000/-, respondent was required to pay another sum of Rs.14,50,000/- on 25.4.2003. The balance amount was required to be paid in four instalments after every two and a half months and, thus, full payment was to be completed by 30.11.2003. Respondent No.2 did not make any payment, after the payment of earnest money afore-mentioned. As per the petitioner, he did not do so despite repeated requests. Blaming him for failing to honour commitment agreed to, the petitioner has pleaded that the agreement stood automatically cancelled when respondent failed to comply with the terms and conditions on his part. The aspects as to who is at fault would be gone into by the Civil Court where the suit for specific performance has been filed. The question required to be seen is whether any criminal offence is revealed against the petitioner. Mere failing to

execute an agreement to sell would not lead to any criminal liability on either side. It is a pure and simple case of civil liability for which the parties are already contesting before civil courts. Bare reading of the FIR as such would not reveal any offence. In State of Haryana and others Vs. Ch.Bhajan Lal & Ors., JT 1990 (4) S.C. 650, the Hon'ble Supreme Court has observed that where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused, then the FIR in such a case can be ordered to be quashed.

The present case seems to be fully covered by the ratio of law as laid down by the Hon'ble Supreme Court as noticed above.

As a result, the petition is allowed and FIR No.167 dated 2.8.2004 under Sections 406, 420 and 120-B IPC registered at Police Station Sadar Ludhiana and the subsequent proceedings thereto are quashed.

November 28, 2006 **(RANJIT SINGH)**
khurmi **JUDGE**